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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,547	07/25/2003	David L. Bauer	5053.00009	3536

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EXAMINER

PATEL, JAGDISH

ART UNIT	PAPER NUMBER
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3693

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/627,547	Applicant(s) BAUER ET AL.	
	Examiner JAGDISH PATEL	Art Unit 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-15,17-30 and 32-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-15,17-30 and 32-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. This communication is in response to amendment filed 7/14/2006.

Response to Amendment

2. Claim 1, 5, 15, 19, 21-24, 26, 29, 30, 33, 37, 42, 43, 47, 52-54 have been amended and new claims 55-61 have been added.

Response to Arguments

3. The examiner has withdrawn rejections of claims under 35 USC 112 (second) cited in prior office action. Upon further consideration, the pending claims have been found rejectable newly found over prior art. The examiner regrets any inconvenience to the applicants due to this unfavorable decision.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3-4, 13-15, 17, 18, 27, 28, 33-39, 44-49, 54, 55, 57, 58, 60 and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by Handler (WO 00/34899).

Handler (WO 00/34899) teaches an online auction system for enabling bidder over a computer network by remotely located bidders utilizing computing devices for receiving information to be provided to a bidder and transmitting bid information of the bidder (referring to System Overview on p. 5) comprising:

One or more servers configured to provide an auction service (auction site 400 which comprises one or more listing servers) having 1) a preliminary bidding component conducted over the computer network, the preliminary bidding component offering for auction a plurality of items, each item offered for a preestablished duration of time, the preliminary bidding component resulting in a final preliminary bid for each of the plurality of items (p. 3 L 1-3, refer to first stage of the integrated auction referred to as “pre-auction bidding stage” in which a highest bid for each item is established. Note also that the bidding information is updated on the online auction site during this stage, also refer to p. 6 L 12-18 which in part states “..an initial round of 530 taking place over a predetermined period of time may establish a starting bid for the live auction stage 540), and 2) a dynamic real-time auction component conducted over the computer network, beginning after closing of the preliminary bidding component upon expiration of the preestablished duration of time, the dynamic auction component offering for auction each of the plurality of the items from the preliminary bidding component, the dynamic auction component defining a starting bid for each of the plurality of the items in the dynamic auction component based on the respective final preliminary bid from the preliminary bidding component (p. 3 L 4-5 second stage or the “live auction stage” also referred to as “online

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auction” using the highest bid from the pre-auction bidding stage, also refer to p. 6 L 12-18 which in part states “..an initial round of 530 taking place over a predetermined period of time may establish a starting bid for the live auction stage 540)

Claims 3, 4, 13, 14 and 27-28 : proxy bids are accepted during the preliminary auction component (see proxy bidding process, p. 5 L 33-36).

Method claims 15, 17 and 18 correspond to system claims 1 and 3-4 respectively and are analyzed as such.

Claim 33: refers to functionality, which is disclosed in the Handler reference analyzed in claim 1 analysis.

Claims 34-38 and 44-48 are inherently disclosed in Handler reference. For example, Handler teaches at p. 6 L 11 described various stages of the “integrated auction”. Note that the “live auction” commences after the closing of the “online auction” and that the additional proxy bids are only accepted after the conclusion of the live auction. Claims 44-48 are also analyzed accordingly because they correspond to claims 34-38 respectively.

Claim 39 and 49: Handler teaches first bidding format (proxy bidding) and the dynamic real-time auction component provides a different bidding format (see Integrated Auction Flow, p. 6).

Claims 54 correspond to claim 33 because the structure and functionality of the claimed system are not distinct from each other. Claim 33 is directed to an online auction while claim 54 is directed to online sale over a computer network. However, the structure of the claims is not distinct. Therefore same rationale of prior rejection as claim 33 also applies to claim 54. Note also that this comment also applies to all independent “system claims”.

Claim 55 and 58 : Handler discloses this feature inherently because, if during the second stage (live auction stage) no higher bid than the starting bid established during the preliminary bidding stage is received the starting bid would be the highest bid and therefore a winning bid.

Claims 57: the dynamic auction component is configured to accept, for each of the plurality of the items, a dynamic bid greater than the final preliminary bid received for the respective item during the preliminary bidding component (inherent in the Handler apparatus because the objective of the second stage of the integrated auction is maximize price of the one more items offered in the auction).

Claims 60 and 61: refer to discussion of claim 57.

Claim Rejections - 35 USC § 103

6. Claims 5, 6, 19, 20, 29 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Handler as applied to claim 1 above, and further in view of Dorr USPGPub 2002/0016743 (Dorr)

Regarding claims 5 and 6: Dorr teaches countdown timer displayed on a screen of each of the ..bidder..

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to incorporate the countdown timer displayed on a screen of each of the ..bidder.. because this would make readily apparent to the user without any mental calculations whatsoever as to how much time is left for submitting one or bids for the item being auctioned. This feature in turn would allow the bidder to react to any bid changes in a timely manner.

Method claims 19 and 20 correspond to system claims 5 and 6 respectively.

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Claims 32 and 29: Refer to claims 5 and 6 analysis.

7. Claims 7-12, 21-26, 30, 40, 50, 56 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Handler as applied to claim 1 and further in view of the Official Notice.

Handler fails to teach, however, Official Notice is taken that alerting bidder or potential customers for various upcoming events via various communication means such as electronic mail, instant message etc. is old and well known in the electronic commerce.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to implement means for altering the bidders based on this Official Notice because this would allow more bidders to participate in the auction.

Method claims 21-26 correspond to system claims 7-12 respectively.

Claim 30 is analyzed as per claim 7.

8. Claims 40 and 50: Handler fails to teach offering the plurality of items for bid simultaneously, and the dynamic real-time auction component offering the items individually. However, offering a plurality of items simultaneously and offering items individually for sale over a computer network is old and well known and the examiner takes official notice of this feature.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Handler in view of the officially noticed facts to offer the plurality of items in various formats as matter of auctioneer's business decision.

9. Claims 56 and 59: recites computerized feature equivalent to "going once, going twice, gone" which is customary in the traditional auctions. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Handler to configure the dynamic auction in Handler accordingly in order to alert the bidders of the impending closing of the auction.

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10. Claims 41 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Handler as applied to claim 1 as analyzed above, and further in view of Walker (US 20060224497, Priority us-provisional-application US 60152119 19990902).

Handler fails to teach, however, Walker (US 20060224497, Priority us-provisional-application US 60152119 19990902) teaches behavior of the bidders (bid increment) as a function of the time allotted between dynamic bids (see Summary).

It would be obvious to one of ordinary skill in the art at the time of applicant's invention to modify Handler in view of Walker to decrease the time allotted between dynamic bids because this would influence the behavior of one or more bidders in an auction may influence another bidder's perception of the value of the item.

11. Claims 42-43 and 52-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Handler as applied to claim 1 as analyzed above, and further in view of Peterson (CA 2329281), Publication 06/21/2002.

Claims 42-43 and 52-53: Handler fails to teach that the real-time component is configured to provide, for each of the plurality of items, a matrix of selectable bid amounts for selection by a user. Peterson, in the same field of endeavor teaches buttons, which enable the bidders to select, bids from different adaptive (dynamic) bid increments in a dynamic auction. (see p.3 and 4).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Handler by incorporating a matrix of selectable bid amounts as per teaching of Peterson because this would spur additional bidding activity in a dynamic auction environment because the bidder would be enabled to enter bids faster and accurately, where short time period is available to each bidder to select and enter the next bid.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (571) 272-6748.

The examiner can normally be reached on **800AM-630PM Mon-Tue and Thu.**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammel can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 517-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jagdish N. Patel

(Primary Examiner, AU 3693)

10/2/06